



US Army Corps  
of Engineers®

SAN FRANCISCO DISTRICT

US Army Corps  
of Engineers

Regulatory Branch  
333 Market Street  
San Francisco, CA 94105-2197

# PUBLIC NOTICE

NUMBER: 28218S      DATE: October 10, 2003  
EMERGENCY REPAIRS (RGP 5)  
RESPONSE REQUIRED BY: November 10, 2003

PERMIT MANAGER: Ed Wylie PHONE: 415-977-8464

Email: ewylie@spd.usace.army.mil

## Proposed Regional General Permit for Repair and Protection Activities in Emergency Situations

1. **INTRODUCTION:** The San Francisco District of the U.S. Army Corps of Engineers (District) is proposing to re-issue its Regional General Permit (RGP) 5 which will allow fill discharges into waters of the United States within the District for repair or protection activities in emergency situations. This proposal is being processed pursuant to the provisions of Section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act (RHA) of 1899 (33 U.S.C. 403).

2. **BACKGROUND:** The District's most recent RGP for emergency repairs was issued on April 24, 2001 and expired on August 31, 2003. During that time period 19 projects were authorized using the RGP. The California Department of Transportation (Caltrans) received 12 permits while the remaining approvals were all issued to county or city authorities. No permits were issued to individuals or commercial entities during the two winter seasons the RGP was available. The 19 permits authorized a total of 0.83 acre (0.21 acre tidal and 0.62 acre non-tidal) of impacts to Corps jurisdictional waters.

3. **CURRENT PROPOSAL:** The District proposes to re-issue RGP 5 (attached) through August 31, 2013 (i.e., through ten (10) winter seasons). The definition of an "emergency" remains consistent with

State of California's California Environmental Quality Act (CEQA). Formal approval from the District is required **before** taking action under the RGP's authority and a post construction report is required **after** the work is completed.

#### 4. **OTHER APPROVALS:**

**Water Quality:** Under Section 401 of the CWA (33 U.S.C. Section 1341), the District must obtain a water quality certification before the RGP may be issued. By copy of this Public Notice, the District is requesting water quality certification for this permit from the State Water Resources Control Board. Those parties concerned with any water quality issues that may be associated with this permit should write to the Executive Officer, California State Water Resources Control Board, P.O. Box 100, Sacramento, California 95812-0100, by the close of the comment period of this Public Notice.

**Coastal Zone Activities:** Similarly, by copy of this Public Notice, the District is requesting concurrence from the California Coastal Commission (CCC) and the San Francisco Bay Conservation and Development Commission (BCDC) that this RGP is consistent with the federal Coastal Zone Management Act (CZMA) for projects in their jurisdiction. If those agencies cannot provide that concurrence, then

emergency projects will continue to have to be reviewed on a case-by-case basis.

**Cultural Resources:** Given that the majority of emergency activities involving flood events that potentially endanger life or property are located in what are now or what were in the past active floodplains, or are in locations threatened by an active period of erosion, cultural resources that may be present have a low potential for complete integrity. Historic disturbances probably occurred to such a degree that emergency corrective measures would not further endanger the resource. The position of the District is that most cultural resources that may be impacted through actions authorized under this RGP would already be impacted through the emergency event and that further damage through authorized actions would probably be considered not adverse. If cultural sites do exist, those portions immediately adjacent to flood channels are often disturbed. In fact, bank stabilization may result in site protection, and therefore would provide a beneficial effect. By copy of this Public Notice, the District is seeking a "no effect" determination and hereby requests the State Historic Preservation Officer's (SHPO) input on the proposed action.

**Endangered Species:** Section 7 of the Endangered Species Act (ESA) of 1973, as amended, contains provisions for consultation in the event of emergencies that threaten human welfare or property. The District, U.S. Fish and Wildlife Service (F&WS), and National Marine Fisheries Service (NMFS) will expedite coordination among the agencies during emergency situations. In brief, if the District determines that emergency authorization is warranted, District staff will contact, by telephone and/or facsimile transmission, specific personnel from the Service(s) to determine if listed species or designated critical habitat may be present and, if so, what actions could be taken during the emergency response to minimize the

effects of the response on the listed species or designated critical habitat. The District will provide these recommended measures to the applicant seeking emergency authorization. At the conclusion of the emergency, the District and the Service(s) would complete formal consultation on the effects of the emergency action on listed species or designated critical habitat, as required by the ESA.

**5. ENVIRONMENTAL ASSESSMENT:** The District will assess the environmental impacts of the action proposed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (Public Law 91-190), and pursuant to Council on Environmental Quality's Regulations, 40 CFR 1500-1508, and Corps of Engineers' Regulations, 33 CFR 230 and 325, Appendix B. Unless otherwise stated, the Environmental Assessment will describe only the impacts (direct, indirect, and cumulative) resulting from activities within the jurisdiction of the Corps of Engineers. The documents used in the preparation of the Environmental Assessment will be on file in the U.S. Army Corps of Engineers, San Francisco District, Regulatory Branch, 333 Market Street, San Francisco, California.

**6. PUBLIC INTEREST EVALUATION:** The decision whether to issue this permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. Evaluation of the probable impacts that the proposed activity may have on the public interest requires a careful weighing of all those factors that become relevant in each particular case. The benefits that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. The decision whether to authorize a proposal, and if so the conditions under which it will be allowed to occur, are therefore determined by the outcome of the general balancing process. That decision will reflect the national concern for both protection and utilization of important resources. All

factors that may be relevant to the proposal must be considered including the cumulative effects thereof. Among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

details may be obtained by contacting Ed Wylie of our office at telephone 415-977-8464 or E-mail: ewylie@usace.army.mil. Details on any changes of a minor nature that are made in the final permit action will be provided on request.

**7. CONSIDERATION OF COMMENTS:** The District is soliciting comments from the public, Federal, State and local agencies and officials, Indian Tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the District to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the NEPA. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

**8. SUBMISSION OF COMMENTS:** Interested parties may submit in writing any comments concerning this activity. Comments should include the number and the date of this Notice and should be forwarded so as to reach this office within the comment period specified on Page 1 of this Notice. Comments should be sent to the Regulatory Branch. Any person may also request, in writing, within the comment period of this Notice that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing. Additional